IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

LETTERS PATENT APPEAL NO. 227 OF 2000

IN

WRIT PETITION NO. 1464 OF 2000

WITH

CIVIL APPLICATION NO. 4 OF 2007

AND

CIVIL APPLICATION NO. 5 OF 2007

WITH

CONTEMPT PETITION NO. 14 OF 2004

Pratapgir Songir Gosavi
& Ors. .. Appellants.

vs.

State of Maharashtra
& Ors. .. Respondents.

Mr. V.B. Tapkir for Appellants.
Mr. C.R. Sonawane, AGP., for Respondent no. 1.

..

Coram: J.N. PATEL &,
SMT. R.S. DALVI, JJ.
Date: 2ND APRIL, 2007.

P.C.

. Heard the learned counsel for the parties.

2. The appellants have approached this Court impugning the dismissal of the petition in limine by the learned Single Judge of this Court vide order dated 24.4.2000.

3. The appellants preferred a petition under Article 227 of the Constitution of India impugning the judgment and order passed by the Divisional Commissioner, Pune Division, Pune on 13.10.1999. The factual matrix of the case is that of land belonging to the appellants was acquired for rehabilitation of the Chaskaman Project displaced persons. During the proceedings, a proposal was made that alternatively the land out of land bearing Gat No. 176 be acquired for the purpose which was accepted by the Additional Commissioner and accordingly possession of the alternate land bearing Gat No. 176 admeasuring 10.00 acres has been given to the Government as per Court's order and the land acquisition proceedings in respect of land Gat Nos. 43, 124 and 175 came to be cancelled. It appears that during the course of the time it was found that the appellants have virtually lost the land which was proposed to be acquired and even the land which was offered as an alternative out of Gat No. 176, which is evident from the impugned order of the Additional Commissioner, based on which the Addl. Commissioner did not consider the case of the

appellants in the appeal preferred before him as the land which was notified for acquisition was already distributed amongst the project displaced persons by the State after having taken possession and, therefore, the land acquisition in respect of Gat Nos. 43, 124 and 175 cannot be withdrawn. The land which was offered in the alternative by the appellants, possession of which was given out of Gat No. 176, was also distributed amongst the displaced persons and, therefore, the Addl. Commissioner felt that it also cannot be returned back to the appellants as demanded and the balance land admeasuring 2 Hectares 40 Ares came to be returned back to the appellants.

4. The learned counsel for the appellants submitted that besides acquiring the land which was notified for acquisition for the purpose of rehabilitation of project displaced persons, the State has also taken possession of 1 Hectare, 60 Ares out of Gat No. 176 and further 4 Hectares of the land came to be distributed amongst the displaced persons which was willingly offered by the appellants as the alternative land in lieu of releasing the land under acquisition, i.e. the land in respect of Gat Nos. 43, 124 and 175. Therefore, the appellants have been deprived of their land particularly land out of Gat No. 176 which was not under acquisition without following the procedure provided under the Land Acquisition Act and the State having accepted the offer, failed to fulfil its

commitment.

5. In the aforesaid facts and circumstances, we find that the learned Single Judge ought not to have dismissed the petition impugning the said order by invoking Article 227 of the Constitution of India in limine. Therefore, we quash and set aside the impugned order dated 24.4.2000 as the matter deserves to be examined on merits as it concerns right to property of the appellants particularly the one which has been acquired by the State without following a proper procedure and thereby having deprived the petitioners of his property without paying any compensation for the same. The appeal is allowed in the aforesaid terms with no order as to costs.

6. In view of this Court allowing the appeal, the learned counsel for the appellants withdraws the contempt petition with liberty to take recourse to the remedy available to him under the law.

7. In view of the disposal of the appeal, the civil applications do not survive and the same are dismissed as infructuous.

(J.N. Patel, J.)

(Smt. R.S. Dalvi, J.)